



CROMWELL GROUP, INC. D/B/A CROMWELL RADIO GROUP

November 1, 2004

To: Federal Communications Commission

Re: Notice of Inquiry

"In the Matter of Broadcast Localism"

Recordings

MB Docket Number No. 04-233

Dear FCC Commissioners and Staff:

Introduction

As an AM/FM licensee of 32 years, principally in smaller communities, I wish to comment on this Inquiry. It is my intent/hope to give you pro-active comments that will make sense and be constructive.

You should know that we have licensed/operated 31 different radio stations in 32 years. The first one was a construction permit I received in 1972 after a 3 year hearing. It was for a 500 watt daytime AM in a city of license of 1,500. We still license and operate that station (though it has been up-graded to 2,500 watts full-time directional. The city of license and local business community has actually declined in size.) Of the 31 stations we have licensed/operated, 19 were construction permits either built from scratch (13) or upgraded (6). In addition, of the 13 (12FM/1AM) built from scratch, four subsequently received major CP up-grades. Thus we have built a lot of new radio facilities and provided additional service/choice to under-served rural areas in city's of license generally of less than 100,000 (usually less than 15 - 20,000 people). JUST THIS PAST FRIDAY ONE OF OUR STATIONS BECAME THE FIRST FM IN TENNESSEE TO BROADCAST IN HD DIGITAL (IBOC), even though there are no radios. We are committed to offer digital on 12 of our smaller market stations (at a cost of approximately \$50,000+ each) by mid 2007.

In 1972 there were only 4,000 (+/-) radio stations in America, today there are 12,000 +/- . In 1972 there was no internet (1990s), no internet radio (1990s), no satellite TV (1980s), minimal cable (1960s but then for better reception of "over the air TV"), no digital cellular service (providing now internet, phone, satellite and more to come), no satellite radio (2002). In 1972 the only source of revenue for an "over the air" radio station was advertising. That continues today, while the newer services have multiple streams of revenue (subscription/other and advertising). The new services also provide a number of

unregulated programming choices for the public that serve all multiple tastes of morality and diversity. The public today has much more choice from a variety of information delivery sources than in 1972.

The Question:

In essence, your inquiry asks if "local over the air broadcasters" are doing enough to serve their local communities and if additional or re-regulation will cause the Communities to be better served. THE HONEST ANSWER is "In some cases you might find perceived improvement (by some) and in other cases the result will be considered counterproductive (by others). In fact, the result could/will be decidedly NEGATIVE over the long haul. In a country that is as divided as it is on national policy and tomorrow's national election, it is virtually impossible to satisfy all sides, even in a very small community. By the time you read this, you'll know the outcome of the election, but there will still be a very divided point of view on many local and national issues. Thus, it is very hard to satisfy everyone. Programming considered satisfactory by some groups will be totally unsatisfactory to another.

Localism, in my view, is to provide a voice and outlet for various points of thought in the community. The definition of "community" is elusive in that larger markets are more segmented than smaller markets. In a larger market, there is greater demographic/interest segmentation than you might find in smaller communities. Thus, many of the issues you want to document don't fit into an easy box. The FCC has wisely recognized that programming requirements do not work and are unconstitutional. Regulation that is designed to direct programming is likewise more and more counterproductive when taken in the light of all the additional media in each community.

Each community that we serve also has: Daily Newspapers, Cable Systems (with 50 to 100 channel choices), Multiple Television stations, 300+ channels of Satellite radio, various Internet services and Chat rooms, specific interest publications and multiple "over the air" radio stations with different owners. When I started in 1972, only the newspapers existed. Cable was in its infancy. We now have all the additional media and three times as many "over the air radio stations". Only the number of newspapers has not expanded. Gannett and many larger newspaper groups have gobbled up that industry while in broadcast we still have more owners/licensees than we did in 1972 and multiple owners in each market. The challenge to local "over the air" broadcasters is serving this more diverse world in the face of all this change. How we did it years ago is not the question. It is "How can we continue doing it and doing it better in the years to come?" More subjective regulation and direction on content does not seem appropriate and does seem counterproductive.

Comment:

Will the marketplace be enough to make/encourage broadcasters to be community responsive? Bottom line...if a station is not community responsive the "local" advertising that is essential to "over the air" broadcasters is not spent with them. The

FCC has assured that each "over the air broadcaster" has at least one and usually two competitors. This is "on top of" the competition for revenue that comes from other media who generally have no direct competition in their environment (i.e., cable, daily newspaper, outdoor), but have both subscription and advertising revenue, among other sources. For "over the air" broadcasters it is good business to serve the local audience. If we do not, we do not have a business.

Are there ways the FCC can facilitate the public's understanding of local programming opportunities? Broadcasters currently broadcast a variety of announcements to inform listeners of the licensee responsibilities. Often members of the general public misunderstand those responsibilities to mean that the licensee can and should do whatever the individual requests. In many ways, we are like the local politician who is running for election. It is up to us to try to please everyone because virtually all know they can complain to the FCC. No other medium faces this. Even if not guilty of anything, the broadcaster faces financial consequences of having to defend themselves against an FCC complaint. The FCC can heighten this public awareness, but it seems that most (especially special interest groups) are plenty aware. In many cases the public believes that broadcasters are required to do things they are not. The FCC could help clarify to the public what we are required to do and in the same vein clarify what licensees are NOT required to do.

Should radio and TV be treated differently in terms of policies and rules designed to promote localism? YES. Further, large market radio should be treated differently than small market radio. Large market TV should probably be treated differently than small market TV, but it is harder for me to define. Small market radio would generally be in non-ARBTRON markets or non-metro areas. The smaller the market the less likely the broadcaster is to receive national/regional advertising revenue. Thus, service to the local community is very much driven by competition for local listeners and the local advertiser support. In smaller communities there are only "so many" potential listeners. In some cases, there is already a local radio station for every one to three thousand people. That creates quite a challenge that may not be a sustainable business, unless part of a larger cluster of stations...particularly in smaller communities.

Local Programming/Local News - It is our belief that anything between the music should be of local relevance. In fact, we often discuss that the music is what we do in between the local programming. For "over the air radio", many stations offer music acceptable to listeners. What sets them apart is what's between the songs. If it is local information, it IS "local news". It may not be in a specific time frame or length, but it IS "local news". Is your question about format, length, title, or content? Viewers to television watch and choose programs. Listeners to radio choose musical formats for mood, but the information (no matter how presented) is local news.

PSA's - There are many worthwhile local causes. We are available to virtually all of them so long as there is some "lead time" to the request (unless there is an emergency and time of the essence). However, we do try to be aware of those organizations who make it a practice of buying advertising everywhere but on the radio. Since our only

source of income/survival is through the sale of advertising, we do think it is fair for such organizations who buy from others to also spend a share with us. There are always exceptions to this, but it is a general point of view. We will always provide more than they pay for.

Political Programming - In this political season our radio stations (one in each area) have broadcast presidential, senatorial, governor's debates, and community forums. We have had politicians and their representatives as morning and afternoon show guests, and we have run their commercials. The stations not running them have cross-promoted so listeners will know where to find the information. We don't know what more we could have done, but we know there is something we have missed. It's not by intent, and regulation would not have improved things. Some of our stations did not run debates, but cross promoted. That was because our other stations were doing it, or other stations in the market were and we did not need to duplicate. Those that did not should not be penalized at license renewal for not duplicating.

Underserved Audiences - The Inquiry notice cites a 1960 En Banc Programming Inquiry. This was before today's technology and at a time when there were less than 1/4th of today's radio stations. One of the FCC's justifications for adding 8 to 9,000 radio stations since 1960 has been to create more public choice. On top of that has been added satellite radio and LPFM whose justifications are specific programming for underserved groups. A single broadcaster licensee today can not be "all things to all people" and must have the leeway to specialize and serve specific communities of people that are sometimes not defined by geography. At the same time, in the same area, other licensees may be targeting service to another set of specific communities or people or needs.

Emergency/EAS - In Tennessee the EAS system does not work on a statewide basis, in spite of the efforts of the Tennessee Association of Broadcasters, of which I am Chairman-Elect. In a recent meeting with us, Governor Bredesen acknowledged that the State has not found a way to make it work in spite of our efforts. The EAS does work for weather alerts, and national emergencies. However, it does not work on the local/state emergency level. The FCC can charge us with the responsibility to be available, but it can not make state and local officials act appropriately if they are unwilling to do so. When EAS was developed, 12,000 radio stations invested in new equipment and threw out the EBS equipment. We have been through many iterations and up-grades. Broadcasters are willing to go the extra mile...and have been. We do not know what to do...at least in Tennessee...and it is true in many other states, I am told. Nonetheless, we stay alert to all emergency situations. In particular, we have installed generators at all but one studio and at most transmitter sites. No area that we serve will be without radio service in time of emergency because the power is out. We have on-duty personnel 24 hours a day to respond to any emergency needs.

Payola/Pluggola - The FCC's rules are sufficiently clear. It is the very nature of the record/music industry to try to get their music played in any way they can. It is up to licensees to do their best to insure legal compliance with FCC rules. The music industry is free to advertise its music (including song length commercials) so long as those

advertisements are identified as such. If a station works with a promoter, it needs to be an arms length contractual relationship on an "above board" basis. FCC rules seem to indicate this and are clear about it. All of our employees sign a statement about "payola/pluggola" at the time of employment. They also receive a copy of the rules and regulations. That is followed up periodically with reminders and copies of the rules/regulations.

Voice Tracking - The argument that voice tracking reduces local involvement is Bogus. For years smaller stations have used satellite programming. In many cases, this has let a small staff do a better job for local involvement and information. The least productive time is that time during a song while an air staff member waits for the song to end. If that staff member is free to do other things because he/she has voice tracked a shift, it is a more efficient use of that employee's time and better for the station(s) ability to serve the community.

National Playlists - As noted above, the most inefficient time for air staff is that time when the music is playing. The FCC should encourage broadcasters to find more ways for talent to involve itself in the collection of community information through the use of technologies. That involves checking and using many national charts. Many stations (including some of ours) have programs that highlight local artists. Stations do make themselves acceptable by playing music that listeners want to hear. Musicians/composers feel that all radio stations should play their music even if it does not have public appeal. That's like telling the local theater to run a play no one wants to see. The playwright wants it, but the public may not. It's hard for the playwright (or musician in our case) to understand. Perhaps this should be a mandate for Non-Commercial Public Stations who are sounding more and more commercial and mass appeal. Large recording companies are a stumbling block for artists/composers as so few will provide the financial support to launch a career, even if a station is willing to play their music locally.

Additional Spectrum - LPFM/Translators - The Inquiry speaks of non-commercial translators as if they are only in the "non-commercial band". In recent years (since 1990) the FCC has been authorizing non-commercial translators on the commercial band. Such translators import signals from stations clear across the country and with no local relevance. Commercial translators are required to rebroadcast the signal of a local station within its 60dbu coverage area. Thus, a commercial translator is providing local service. Non-commercial translators are not. The thought might have been that such non-commercial translators provide programming not available locally, even if they are not local. With satellite radio now available, the need for the across country programming on non-commercial translators no longer exists. New applicants for non-commercial translators should not be permitted to import programming from across the country. Such frequencies should be reserved for LPFM's who will originate local programming. I should note that I believe the 3rd adjacent channel should be protected for all FM broadcasters, including LPFM. The current rules permit "on channel" LPFM just outside the 60dbu. This will further crowd the dial over time and weaken the current coverage of existing FM stations. The AM band is so much more congested than 30 years ago. I do

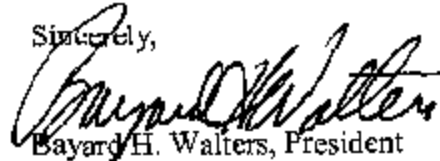
not believe the FCC wants this to happen to FM, but may be heading that way without the real knowledge that it is regulating in such a way that it is happening.

A Final Note - The FCC staff is hard working but unable to keep up with its current work load. It can not be acceptable to the FCC staff or Congress that applications can be pending for one to three years without action or sometimes public notice. Will not many of the rules/regulations anticipated by an Inquiry of this type make matters worse? It would seem to me that the FCC staff would seek ways to unburden itself from minutia and seek regulations/policies/procedures that offer ways to provide prompt action/response to reasonable requests. Many staff members are "the best". They just can't get the work out. You ask if an 8 year license renewal period is too long. When it takes two years for the FCC to make a decision about a "violation", that's 25% of a license period. It is difficult for anyone to provide community service when there is that kind of uncertainty for a business.

Much of the controversy about the radio industry and consolidation has come about because of a few large companies who are in other related businesses beside "over the air" broadcast. Their broadcast activities have been the focus of dissatisfaction because the FCC has a licensing authority only over that activity. Thus, actions targeted at those companies are "running downhill" onto many who are exemplary and are being penalized by the controversy.

I am a member of an unaffiliated group of 100 small and medium broadcasters who call themselves the International Broadcasters Idea Bank (IBIB). Approximately 425 radio stations are licensed to participants in this group. Members solicit ideas from others on how best to serve their communities and meet needs. I suggest that members of this group are exemplary in their service to their local communities and that most, if not all, exceed any standards that the FCC would hope to accomplish from this Inquiry. I think this is true for the bulk of today's "over the air" broadcasters.

Sincerely,



Bayard H. Walters, President
The Cromwell Group, Inc.

PO Box 150846

Nashville, TN 37215

Ph: 615-361-7560/Fax: 615-366-4313

E-mail: BWalters@CromwellRadio.Com